

Appl No.: 10/027,035

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REMARKS/ARGUMENTS

Favorable consideration of this application is respectfully requested. Applicant has canceled claims 1-33 and added new claims 34-61 to clarify the subject matter applicant regards as the invention. New claims 34-61 do NOT raise any new matter since the original application has support for the claims. Favorable reconsideration of this application is, consequently, earnestly solicited in view of the following remarks.

Applicant again thanks the Examiner for the telephone interview on January 24, 2007 to discuss the difference between the subject application and prior art money transfer systems. For the following reasons, Applicant believes that the claims are in condition for allowance.

Applicant incorporates by reference the affidavits filed in the previous response, and the arguments set forth.

Claims 1-6, 8-24 and 26-30 were finally rejected under 35 U.S.C. 102(e), as being anticipated by Ginter et al. (U.S. Publication No. 2005/0246541). This rejection is moot since those claims have been canceled.

Applicant incorporates the previous Declarations of Jay Bolton and B.G. Starkey who are familiar with the Ginter patent application and the subject matter described and claimed in the application under consideration. The affidavits point out the differences between the method and system disclosed in Ginter and the claimed subject matter. These affidavits further clarify that the "sender" and "recipient" are limited to human persons since only human persons sending money one to another can utilize this invention which requires the "sender" to utilize a touch-tone telephone or computer modem and the "recipient" to utilize an ATM or P.O.S. terminal. Examiner alleges that Ginter teaches a

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method of transferring funds (money, cash) using a credit or debit card or bank account between a sender and a recipient and Examiner specifically referred to paragraphs 0716, 0722, 0724 and 0725 to support the allegation. Applicant respectfully disagrees with Examiner's allegation for the following reasons.

For a section 102 rejection to be proper, the subject matter claimed must be found exactly in a single prior art source. Ginter teaches a trusted and secure system and method for item delivery and execution. Paragraphs 0716, 0722, 0724 and 0725 of Ginter teaches use of the system as a "trusted go-between" via a secure communication to confirm that a buyer has deposited purchase money with the escrow bank, that the funds are available, and to instruct the agent to transfer the funds to the seller's bank to release the mortgage or pay other fees required to complete a real property transaction. All four paragraphs are directed toward "a sales transaction where the seller receives payment from a buyer". More specifically, Ginter teaches a communication system to make sure that conditions have been met. The system is not used for the transfer of funds, just to confirm, via a secure communication that the buyer's agent has made the deposit (para. 0716), to select a lawyer and send instruction or to select and instruct an escrow bank (para. 0722), or to instruct the escrow bank to transfer funds to seller's bank (para. 0724). The system does not receive funds from a sender, hold the funds temporarily, and disburse funds to the recipient. Ginter is limited to sending instructions after funds are deposited in an escrow account.

The subject application teaches a system for transferring funds from the senders account to an escrow account and then disbursing the funds to the recipient. An actual money transfer system. Ginter does not teach the steps of new independent claims 1 and 61 as well as the new dependent claims.

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There is no teaching in Ginter that corresponds to the sender account having available funds or to transferring funds from the sender account Ginter does not disclose use of the system for transferring funds wherein the transfer is not in response to a pre-existing transactional relationship. Ginter teaches use of the system for completing some steps in a sales transaction between a seller and a buyer.

The paragraphs cited in Ginter do not teach use of an ATM machine at the remote site or use of a magnetic stripe recipient-card at the remote site by the recipient. Ginter does not include a sender account whether it is a credit card, and debit card. Ginter does not teach using an ATM(automated teller machine). Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration, arranged as in the claim.

The Federal Circuit has stated that anticipation requires the presence of each and every element of the claimed invention arranged as in the claim. There must be no difference between the claimed invention and the reference disclosure, as viewed by a person having ordinary skill in the art. *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984). Ginter is not a money transfer system as claimed in claims 34-61. The transaction protection taught in Ginter is used for real estate transactions where an escrow agent holds the buyers funds until the seller releases the real estate to the buyer at which time the escrowed funds may be applied to the purchase price.

Furthermore, a section 102 rejection requires that a sufficient basis be provided, and some evidence or scientific reasoning to establish why the limitations "providing a sender account controlled by the sender", "authorizing a transfer of the fund into the escrow agent

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account from the sender account" and "wherein said available money or cash is not from a sales transaction where a seller receives payment from a buyer" do not distinguish the claims in the subject application from Ginter. The courts have held that there is nothing inherently ambiguous about a negative limitation so long as the limitation is definite. The limitation "transfer is not in response to a pre-existing transactional relationship between the sender and the recipient" is a negative limitation that is definite and clearly distinguishes claim 1 from Ginter which teaches a step in a sales transaction.

Secondly, the transaction in Ginter requires a buyer and a seller. Without a sales transaction, there would not be instructions to transfer funds. There is no sales transaction in the subject application, just a transfer of cash funds from a sender's account to distally located recipient, for a fee. Claim 1 has previously been amended to clarify that the transfer of funds is authorized "wherein said available money or cash is not from a sales transaction where a seller receives payment from a buyer" (emphasis added) as described in the specification on page 3, lines 8-10 and that the disbursement is authorized without a pre-existing relationship between the recipient and the remote site.

Furthermore, a section 102 rejection requires that a sufficient basis be provided, and some evidence or scientific reasoning to establish why the limitations "providing a sender account controlled by the sender", "authorizing a transfer of the fund into the escrow agent account from the sender account" and "wherein said available money or cash is not from a sales transaction where a seller receives payment from a buyer" do not distinguish the claims in the subject application from Ginter. The courts have held that there is nothing inherently ambiguous about a negative limitation so long as the limitation is definite. The limitation "transfer is not in response to a pre-existing transactional relationship between

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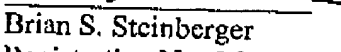
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the sender and the recipient" is a negative limitation that is definite and clearly distinguishes claim 1 from Ginter which teaches a step in a sales transaction.

Since a section 102 rejection requires that the subject matter claimed be found exactly in a single prior art source, and Ginter clearly requires a sales transaction and a transactional relationship between a buyer and a seller. For the reasons provided, Applicant believes that claims 34-61 are allowable under sections 102 and 103 over Ginter.

In view of the foregoing considerations, it is respectfully urged that claims 34-61 be allowed. Such action is respectfully requested. If the Examiner does not agree that the claims are allowable over Ginter, Applicant requests an interview with Examiner Backer and Supervisor Trammell. The Examiner is requested to contact the attorney at the below listed number to schedule the interview.

Respectfully Submitted;


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